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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,211	09/25/2003	Jose Carlos de Azevedo	J&J5040	6959
27777 7590 04/22/2008 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER SAMALA, JAGADESHWAR RAO				
ART UNIT 1618		PAPER NUMBER		
MAIL DATE 04/22/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/671,211

Applicant(s)

DE AZEVEDO ET AL.

Examiner

JAGADISHWAR R. SAMALA

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Application

1. Acknowledgement is made of amendment filed on 01/23/2008. Upon entering the amendment, claims 1-11 have been cancelled and claim 12-15 are amended. Claims 16-17 are added. Accordingly, claims 12-17 are pending and presented for examination.

Previous rejections that are not reiterated herein are withdrawn.

Response to Arguments

2. Applicant's arguments filed on 01/23/2008 with respect to claims have been fully considered but they are moot in view of new ground(s) of rejection due to the scope changes made into the newly amended claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Su (US 6,287,545) or Michael (US 2001/0043912 A1) or Bertolosso et al. (US 2001/0056048 A1) in view of Schmenger et al. (US 6,528,046 B1).

Su discloses a hair conditioner composition comprising thickener agent at concentration of about 0.25%, fatty alcohols in a range of about 1%-10%, cationic surfactants in a range of about 0.1%-5%, cationic polymers in a range of about 0.01%-3% and silicones in a range of about 0.1%-5% (see col. 6 lines 30-50). And further discloses a hair conditioner composition in the form of aqueous emulsions, creamy lotions comprising quaternary ammonium salts, fatty alcohols, viscosity agents, surfactants or emulsifiers, protective colloids or thickening compounds, esters as stabilizers, fragrance/perfumes, dyes, opacifiers, pearlescent aids, buffers, preservatives, antioxidants and the like (see col. lines 50-60, col.4 lines 50-58 and col. 6 lines 30-50).

Michael discloses a hair care composition comprising non-ionic hydrophobic thickener in an amount ranging from 0.02%-1%, fatty alcohols in a range of 1%-10%, cationic surfactant in a range of 0.1%-3%, cationic polymer in a range of 0.5%-10% and silicon in range of 0.001%-5% (see para 0011, 0064, 0067, 0075 and 0095). And also, these hair-care compositions encompass any composition form intended for human use on hair including for e.g. tonics, creams, and balms (see 0026). And also compositions comprises additional formulation aiding components such as surfactants, salts, buffers, thickeners, solvents, opacifiers, pearlescent aids, preservatives, fragrance, colorants, dyes, pigments, chelators, sunscreens, vitamins, and medicinal agents (see 0106).

Bertolosso discloses a hair treatment composition comprising fatty alcohols such as cetyl alcohol, stearyl alcohol and mixtures thereof in a range of 0.01% - 10% (see 0117) cationic surfactants such as cetyltrimethylammonium chloride, behenyl trimethylammonium chloride, cetylpyridinium chloride and thereof in a range of 0.01% - 10% (see 0113), cationic polymers such as polyquaternium-10, polyquaternium 16 and thereof (see 0095-0103), amino functionalized silicone such as amodimethicone in a range of 0.1 to about 8.0 mole % (see 0016 and 0043), and viscosity modifiers, preservatives, polyols such as glycerin and polypropylene glycol, antioxidants such as vitamin E acetate, fragrances and thereof (see 0120). And also, hair treatment composition may suitably take the form of shampoos, conditioners, sprays, mousse or lotions (see 0068).

Su, Michael or Bertolosso meets the claims limitation as described above but fails to include polyether-1 as a thickener in the composition.

However, Schmenger discloses a hair treatment composition comprising thickener such as polyether-1. The composition can be used as a leave-in hair treatment or as a hair rinse condition the hair and conferring to its gloss and volume. Compositions of the invention show superior conditioning and also superior selectivity in conditioning performance. Further the use of nonionic amphiphilic associative thickeners such as polyether-1, in the composition provides conditioning effect in the best manner and shows improved emulsification during use. And further improves the stylability, combability, gloss and feel of the treated hair.

When these references are taken together, one would have been motivated to extend Schmenger's teaching to add a polyether-1 thickener, which may provide esthetic properties and desirable physical properties to the compositions. As suggested by cited references, one would have reasonably expected successful addition of thickener (polyether-1) because the effectiveness, extra benefits (i.e., after the treatment, the hair is noticeably smoother in both the wet and the dry state, and wet combability is markedly improved and also improves the stylability, combability, gloss and feel of the treated hair) and safety are already well proven and are well suggested by latter references cited.

One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients and share common utilities), and pertinent to the problem which applicant concerns about. MPEP 2141.01 (a).

Conclusion

1. No claims are allowed at this time.
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGADISHWAR R. SAMALA whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/

Jagadishwar R Samala

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Supervisory Patent Examiner, Art Unit 1618

Examiner
Art Unit 1618

sjr